

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

KH CAPITAL, LLC,

Plaintiff,

-against-

RICHARD CARDINALE, et al.,

Defendants.

23-CV-10099 (LAK) (RFT)

**ORDER**

**ROBYN F. TARNOFSKY, United States Magistrate Judge:**

Plaintiff alleges claims under the PSLRA and state law. The parties submitted letters setting forth their positions on whether any discovery relating to state law non-fraud claims should go forward during Defendants' anticipated motion to dismiss. (ECF 23, 24, 25.) Based on those submissions, it is hereby ORDERED that all discovery is stayed pending a decision on Defendants' anticipated motion to dismiss the operative complaint.

Discovery on the federal securities fraud claims is subject to the automatic PSLRA stay. While discovery may go forward on non-fraud state law claims in a case alleging both federal securities fraud claims and non-fraud state law claims, such discovery is permissible only when the Court would have diversity jurisdiction over the state law claims. That does not appear to be the case here. A limited liability company is deemed to be a citizen of each state of which its members are citizens. Plaintiff represents that it is a Florida LLC with Florida members. (See ECF 24.) Defendants represent that at least one of the members of one of the Defendant limited liability companies is a citizen of Florida. (See ECF 23.) As a result, there is not complete diversity, and so discovery on the non-fraud state law claims may not proceed during the pendency of Defendants' motion to dismiss.

DATED: April 8, 2024  
New York, NY

SO ORDERED.



ROBYN F. TARNOFSKY  
United States Magistrate Judge